

REMARKS

Claims 32-51 are pending in this application. Claims 45-51 stand withdrawn. By this Amendment, claims 32, 33 and 45 are amended. No new matter is added.

I. Power of Attorney/Mailing Address

A Power of Attorney including a change of address was filed in U.S. Patent and Trademark Office on November 2, 2004. The Power of Attorney was duly recorded. Applicants respectfully request that all further communications be forwarded to Oliff & Berridge, PLC at the address as provided on the Power of Attorney.

II. Telephone Interview

The courtesies extended to Applicants' representative during the telephone interview conducted on February 22, 2005 are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below and constitute Applicants' record of the interview.

III. Election/Restriction

Claims 45-51 stand withdrawn as being drawn to a process that may be practiced by another materially different apparatus. As claim 45 is amended to depend from claim 32, claim 45 includes all of the structure recited therein. Therefore, the process recited in claims 45-51 cannot be practiced by another materially different apparatus. Accordingly, rejoinder and examination of claims 45-51 are respectfully requested.

IV. Claim Rejections Under 35 U.S.C. §112

Claims 32-44 are rejected under 35 U.S.C. §112, second paragraph. As claims 32 and 33 are amended as discussed and agreed during the telephone interview conducted on February 22, 2005, withdrawal of the rejection of claims 32-44 under 35 U.S.C. §112 is respectfully requested.

V. Claim Rejections Under 35 U.S.C. §102

Claims 32-44 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent 4,775,944 to Nakamura. The rejection is respectfully traversed.

Nakamura fails to disclose each and every feature recited in the pending claims. For example, Nakamura fails to disclose a system for using outside ventilation air to maintain indoor comfort and air quality, comprising a sensor system for detecting outdoor and indoor air temperatures; an air delivery system for delivering the outside ventilation air to an interior space; and a controller, operably connected to the sensor system and the air delivery system, that receives an outdoor air temperature and an indoor air temperature detected by the sensor system; stores the detected outdoor air temperature and the detected indoor air temperature detected by the sensor system; calculates a predicted indoor temperature range and a predicted outdoor temperature range based on the stored outdoor air temperature and the stored indoor air temperature; and regulates operation of the air delivery system as a function of predicted indoor and outdoor air temperature ranges and a predetermined indoor air temperature range.

Nakamura discloses a system which calculates the optimum operation condition of the air conditioning and/or hot water supplying apparatus using the operating state information of a central heat source, the outdoor weather information, the indoor atmosphere information, and consumers request, and displays the optimum operating condition on the consumers display unit. Therefore, the consumer can easily operate the air conditioning and/or hot water supplying apparatus with a comfortable environment and take advantages by obeying the displayed message, and which can make the heat load of the central source even and save energy (col. 4, lines 1-13).

In Nakamura, a signal processor 6 calculates energy suppliable to each of a plurality of air conditioner units 8 from a central heat source 4 and determines optimum operating conditions for each of the dwelling units A, B, C, (see Figs. 1 and 2; col. 2, line 58 – col. 3,

line 1). As Nakamura is silent regarding an air delivery system for delivering outside ventilation air to an interior space, but rather only discloses operation of an air conditioner unit, Nakamura fails to disclose each and every feature recited in the rejected claims. Therefore, Nakamura does not anticipate the pending claims.

Once the optimum operating conditions are, various messages are drawn up and the messages are transmitted to the output terminal device 14 of each of the dwelling units via their respective controllers 12 (col. 3, lines 1-5). The messages include promotional information which teaches a desired or preferable operation, incentive information which teaches the advantages to the consumer when the consumer cooperates in making the heat load even or saving energy, discouragement information which indicates the irrationality of certain kinds of operation of the air conditioner apparatus or warns not to operate in such a fashion, and penalty information which imposes a penalty when certain kinds of operation of the air conditioner is performed (col. 3, lines 44-65).

Thus, Nakamura also fails to disclose a controller that regulates operation of the air delivery system as a function of predicted indoor and outdoor temperature ranges and a predetermined indoor temperature range. Rather, the controller 12 is only disclosed as relaying various messages, as described above, to the output terminal device 14 in each of the dwelling units via their respective controllers 12. Thus, the system of Nakamura does not control an air delivery system but rather merely generates messages to be forwarded to the consumer to provide information regarding operation of the heating and cooling system. Accordingly, Nakamura fails to disclose each and every feature recited in the rejected claims. Therefore, withdrawal of the rejection of claims 32-44 is respectfully requested.

The Office Action also indicates that little or no patentable weight is given to functional language in the rejected claims. Applicants respectfully submit that, in addition to the distinguishing features between the claimed subject matter and the applied reference

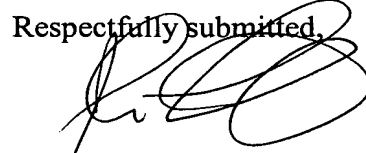
discussed above, functional language further distinguishes the controller of the claims over the applied reference, and must be considered by the Patent Office. As stated in MPEP §2173.05(g), "[t]here is nothing inherently wrong with defining some part of an invention in functional terms...A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used" (emphasis added). One of ordinary skill in the art would understand that a controller which performs a particular function must be programmed or "hard-wired", etc. in order to be capable of performing that function. Thus, the functional language in the claims, which define the functions of the controller, further limits the claims and further defines the structure of the controller. Moreover, the controller 12 disclosed in Nakamura does not perform the functions recited in the claims, but rather merely relays messages.

VI. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 32-51 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Date: April 18, 2005

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